

## **2007 DRAFTING REQUEST**

### **Bill**

Received: **10/24/2007**

Received By: **chanaman**

Wanted: **As time permits**

Identical to LRB:

For: **David Cullen (608) 267-9836**

By/Representing: **Ritch Williams**

This file may be shown to any legislator: **NO**

Drafter: **chanaman**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - sex offenses**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Cullen@legis.wisconsin.gov**

Carbon copy (CC:) to:

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### **Pre Topic:**

No specific pre topic given

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### **Topic:**

Definition of sexual intercourse for incest

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### **Instructions:**

See Attached

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### **Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	chanaman 10/24/2007	wjackson 11/01/2007	pgreensl 11/02/2007		mbarman 11/02/2007		S&L Crime
	chanaman 11/09/2007	wjackson 11/09/2007					
/1			pgreensl 11/09/2007		cduerst 11/09/2007	sbasford 11/13/2007	S&L Crime

FE Sent For: <sup>h</sup>/<sub>4</sub><sup>u</sup> @ intro. 1-2-2008

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/P1	chanaman 10/24/2007	wjackson 11/01/2007	pgreensl 11/02/2007	<u>11/9</u>	mbarman 11/02/2007		S&L Crime

FE Sent For:

11/11/07  
P8  
P8  
<END>

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/P1	chanaman						
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FE Sent For:

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14  
P8  
P8  
<END>

## Hanaman, Cathlene

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**From:** Duerst, Christina  
**Sent:** Tuesday, October 16, 2007 2:58 PM  
**To:** Hanaman, Cathlene; Hurley, Peggy; Ryan, Robin  
**Subject:** FW: Message for Cathlene Hanaman, Peggy Hurley, or Robin Ryan

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**From:** Williams, Ritch  
**Sent:** Tuesday, October 16, 2007 2:52 PM  
**To:** LRB.Legal  
**Subject:** Message for Cathlene Hanaman, Peggy Hurley, or Robin Ryan

Representative Cullen was contacted by a member of the Milwaukee County District Attorney's office regarding a case involving charges of incest against a man who had sexual relations with his developmentally disabled, 18 year-old daughter. In bringing charges against the man, the DA's office ran into a problem with the statutes pertaining to incest, specifically because of the type of contact the man had with his daughter. **[I apologize for the fact this may be unsettling]**: what the man had done to his 18 year-old daughter was to penetrate his daughter in a manner that could not be deemed "sexual intercourse" under the definition found in 944.06.

Specifically, in Chapter 944.06, the definition for incest was not met because the definition of "sexual intercourse" which is cross-referenced to s.939.22 did not seem to apply to the man's actions. In the definition of "sexual intercourse" in 939.22(36), only vulvar penetration amounts to sexual intercourse. According to the DA's office then, anal penetration, fellatio, etc. done to an 18 year-old disabled daughter of a man can not be considered "sexual intercourse"....and because there was no sexual intercourse using the definition found in 939.22(36), there was no incest as defined in 944.06. Because of the woman's age, they could not charge the man with incest as found in s. 948.06, which would have certainly applied to the man's actions.

Essentially, the same actions done to a child do not allow for the same charges when the victim of an incestuous sexual assault is an adult. Representative Cullen would like to have the definition for "sexual intercourse" found in 939.22(36) be changed so that the same language used elsewhere in state law applies. Specifically, Chapter 948.01(6) has a definition for "sexual intercourse" that we would like to have apply to 939.22(36).

Please feel free to contact me if I can answer any questions about this request.

### Ritch Williams

Office of Rep. David Cullen  
State Capitol, Room 216 North  
P.O. Box 8952  
Madison, WI 53708-8952

(608) 267-9836  
ritch.williams@legis.wisconsin.gov



State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-3347/P1

CMH:.....

WLj

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Other

1 AN ACT ...; <sup>gen cat</sup>relating to: the definition of sexual intercourse for the crime of incest. <sup>legally</sup>

*the relationship would prohibit them from marrying*  
**Analysis by the Legislative Reference Bureau**

Under current law, a person who has sexual intercourse with a blood relative, if he or she is related in a degree within which they cannot legally marry, is guilty of a felony. "Sexual intercourse" is defined to require vulvar penetration. This bill expands the definition of "sexual intercourse" to include cunnilingus, fellatio, or anal intercourse or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal opening.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

2 SECTION 1. 944.06 of the statutes is amended to read:

3 **944.06 Incest.** Whoever marries or has nonmarital sexual intercourse, as  
4 defined in s. 948.01 (6), with a person he or she knows is a blood relative and such

- 1 relative is in fact related in a degree within which the marriage of the parties is  
2 prohibited by the law of this state is guilty of a Class F felony.

History: 1977 c. 173; 2001 a. 109.

3 (END)



State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-3347/P1

CMH:wlj:pg

↑  
stays

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

TODAY

- 1 **AN ACT** <sup>Re Gen</sup> *to amend* 944.06 of the statutes; **relating to:** the definition of sexual  
2 intercourse for the crime of incest.

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2 prohibited by the law of this state is guilty of a Class F felony.

3 (END)

**Duerst, Christina**

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**From:** Williams, Ritch  
**Sent:** Tuesday, November 13, 2007 10:22 AM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB 07-3347/1 Topic: Definition of sexual intercourse for incest

Please Jacket LRB 07-3347/1 for the ASSEMBLY.